

Article 7. Financial Assurances Cost Estimate Appeal Procedures

§ 3680. Purpose of Regulations.

The regulations contained in ~~this article~~ sections 3681 – 3690 govern procedures for appeals to the State Mining and Geology Board (“the Board”) filed by any person other than the division concerning lead agency denial of or inaction upon financial assurances cost estimates for reclamation of ~~existing~~ surface mining operations under section 2770 of the Public Resources Code.

NOTE

Authority cited: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.

§ 3681. Filing of Intent to Appeal.

~~(a) Any person filing an~~ An appeal to the Board pursuant to section 2770 of the Public Resources Code concerning financial assurances cost estimates for reclamation shall, within 15 days of exhausting ~~his or her~~ the right to appeal in accordance with the procedures of the lead agency, file a notice of intent to appeal by submitting the following information:

(1) A map indicating the exact location of the surface mining operation, including township and range.

(2) A copy of all documents ~~which together comprise~~ that constitute the financial assurances cost estimate for reclamation ~~which are the subject of the appeal.~~ intending to be appealed.

(3) Written statements, with supporting documentation, indicating the basis for the appellant's challenge of the action or inaction by the lead agency concerning the financial assurances cost estimate for reclamation.

~~(4b) Copy~~ A copy of the notice of intent to appeal shall be sent to the lead agency, ~~that the appellant intends to file an appeal with the Board.~~

NOTE

Authority cited: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.

§ 3682. Determination of Jurisdiction.

The ~~Chairman~~ Chairperson of the Board, or the ~~Chairman's~~ Chairperson's designee (Board Member), shall determine whether the appeal is within the jurisdiction of the Board for purposes of hearing the appeal, and determine whether the appellant's challenge raises any substantial issues related to the review by the lead agency of the financial assurances cost estimate for reclamation for ~~existing~~ surface mining operations pursuant to Public Resources Code section 2770. If the ~~Chairman~~ Chairperson finds, based on the criteria stated in (a) through (c) below, that the appeal raises no substantial issues with respect to the review by the lead agency of the financial assurances cost estimate for ~~existing~~ surface mining operations under Public Resources Code section 2770, he or she shall refuse to grant a hearing on the appeal. In making this determination, the ~~Chairman~~ Chairperson shall consider the following:

(a) Whether the appeal raises any issues which legally can be addressed by the Board within the limits of Public Resources Code section 2770 and the rules of the Board;

(b) Whether the appeal specifically relates to the lead agency's review of the financial assurances cost estimate submitted for ~~existing~~ surface mining operations pursuant to the provisions of Public Resources Code section 2770; and

(c) Whether the appellant has exhausted ~~his or her~~ all appeal remedies before the lead agency.

NOTE

Authority cited: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.

§ 3683. Limit on Number of Filings of Appeal.

Upon a finding by the ~~Chairman~~ Chairperson, or the ~~Chairman's~~ Chairperson's designee (Board Member), that the appeal is not within the jurisdiction of the Board, the appellant may refile the notice of intent to appeal, once only, with the identified information needed to complete the appeal, within 21 days of receipt of the letter of denial of the original notice of intent to appeal.

NOTE

Authority cited: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.

§ 3684. Administrative Record.

(a) Once the appellant has been notified that a determination has been made that an appeal is within the jurisdiction of the Board for purposes of hearing the appeal, the appellant shall submit ~~three~~ 3 ~~certified~~ copies of the complete administrative record certified by the lead agency, which shall include, but shall not be limited to, all of the following information:

(1) A copy of the approved reclamation plan for the mining operation and any permit conditions or California Environmental Quality Act mitigations which pertain to reclamation for which the financial assurances for reclamation are proposed;

(2) A copy of the documents comprising the financial assurances cost estimate or the proposed financial assurances cost estimate for reclamation which were submitted to the lead agency for review and approval pursuant to Public Resources Code section 2770;

(3) Location and site description maps submitted to the lead agency as part of the reclamation plan;

(4) A detailed estimate of the cost of the reclamation, in accordance with the approved reclamation plan, of the lands remaining disturbed and/or to be disturbed by the surface mining operation in the applicable ~~twelve~~ (12) month period, together with a map clearly delineating the boundaries of those lands;

(5) All reports, findings, communications, correspondence and statements in the file of the lead agency relating to the financial assurances cost estimate for reclamation in question;

(6) Written transcripts of all public hearings related to the lead agency's review of the financial assurances cost estimate.

(b) Failure of the appellant to request the certified administrative record from the lead agency within ~~24~~ 15 days of receiving the notice stating the Board's acceptance of the appeal, may be ~~deemed~~ grounds for dismissal of the appeal.

(c) If the appellant is unable to obtain the certified administrative record from the lead agency within 10 working days after submission of the request for the record, the appellant shall so notify the Board in writing. The Board may then require the lead agency to immediately submit ~~three~~ 3 certified copies of the administrative record to the Board for purposes of hearing the appeal without undue delay.

(d) Failure of the lead agency to produce the certified administrative record upon request of the Board within 30 days may be ~~deemed~~ grounds for Board action based on information provided solely by the appellant.

(e) Following production of the certified administrative record by the lead agency, failure of the appellant to produce the administrative record upon the request of the Board within ~~24~~ 15 days may be ~~deemed~~ grounds for dismissal of the appeal.

NOTE

Authority cited: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.

§ 3685. Hearing Procedures - Scheduling.

The Board shall schedule and hold a public hearing on an appeal no later than 45 days from the filing of the complete certified administrative record, or at such time as may be mutually agreed upon by the Board, the appellant, the operator and the appellant lead agency. The hearing may be scheduled as part of a regular business meeting of the Board or may be conducted by a committee of the Board.

NOTE

Authority cited: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.

§ 3686. Hearing Procedures - Authority for Delegation.

The Board may delegate conduct of the hearing to a committee of at least ~~two~~ 2 Board members to be appointed for that hearing by the ~~Chairman~~ Chairperson of the Board. The ~~Chairman~~ Chairperson of the Board or the ~~Chairman's~~ Chairperson's designee (Board Member) shall conduct the hearing; the recommendations of the committee shall be presented to a quorum of the board at a regular business meeting for a decision of the full Board consistent with the procedures set forth in section 3690 of these regulations.

NOTE

Authority cited: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.

§ 3687. Hearing Procedures - Notice.

(a) At least 10 working days prior to the hearing, the Board shall give public notice as follows:

- (1) Mailing the notice to the lead agency and to the appellant;
- (2) Mailing the notice to any person who requests notice of the appeal or hearing;
- (3) Mailing the notice to the Board's regular mailing list, and posting the notice on the Board's website; and

(4) Posting of the notice in a place where notices are customarily placed within the jurisdiction of the lead agency.

(b) The notice of hearing shall include the following:

(1) The name of the appellant;

(2) ~~Description~~ A summary of the financial assurances cost estimate for reclamation that was denied or not acted upon by the lead agency, identification of the surface mining operation for which the financial assurances cost estimate for reclamation ~~were~~ was provided, a brief description of the location of the surface mining operation by reference to any commonly known landmarks in the area, and a simple location map indicating the general location of the operation;

(3) A statement of the grounds for the appeal;

(4) A statement that the Board may approve or deny approval of the financial assurances cost estimate for reclamation;

(5) A statement that if the Board denies approval of the financial assurances cost estimate, ~~they shall be returned to the mine operator who the appellant shall be granted, once only, a period of 30 days, or a longer period mutually agreed upon by the operator and the Board, time to correct the noted deficiencies and submit the revised financial assurances cost estimate to the lead agency for review and approval as provided for in Public Resource Code section 3690 (b);~~

(6) A statement inviting the appellant, the lead agency, and the public to provide testimony and evidence at the hearing regarding the action or inaction of the lead agency; and

(7) The time, date, and location of the public hearing.

NOTE

Authority cited: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.

§ 3688. Hearing Procedures - Record.

The record before the Board at the public hearing shall be the certified administrative record submitted pursuant to sections 3681 and 3684 of this article.

NOTE

Authority cited: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Sections 2770 and 2774, Public Resources Code.

§ 3689. Hearing Procedures - Sequence.

(a) The public hearing shall normally proceed in the following manner:

(1) Identification of the record;

(2) Statements on behalf of the appellant;

(3) Statements on behalf of the lead agency;

(4) Statements on behalf of the Division of Mine Reclamation and any other public agency or agencies exercising jurisdiction over the surface mining operation, if applicable;

(45) Statements on behalf of the public;

(56) Rebuttal on behalf of the appellant; and

(67) Motion to close the public hearing.

(b) Notwithstanding the above, the ~~Chairman~~ Chairperson or the ~~Chairman's~~ Chairperson's designee (Board Member) for purposes of conducting the hearing may, in the exercise of discretion, determine the order of the proceedings.

(c) The ~~Chairman~~ Chairperson or the ~~Chairman's~~ Chairperson's designee (Board Member) shall have the authority to impose time limits upon statements and presentations and to accept written statements in lieu of oral statements. Written statements shall be submitted to the Board at least ~~ten~~ 15 days prior to the hearing.

(d) The public hearing shall be recorded.

NOTE

Authority cited: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.

§ 3690. Hearing Procedures - Determination.

(a) Following the public hearing, the Board shall determine whether, based on the record before it, the proposed or existing financial assurances ~~cost estimate~~ for reclamation ~~substantially meet~~ is sufficient to complete reclamation in accordance with the approved reclamation plan and/or plan amendment pursuant to the applicable requirements of Public Resources Code sections 2770, 2773.1, 2773.4, Article 11 (commencing with section 3800) of this subchapter, the Board's financial assurance guidelines, and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of section 2774. Financial assurances ~~cost estimates~~ determined to meet these requirements shall be approved by the Board. Notification of the Board's determination shall be made by certified mail to the appellant and the lead agency within ~~45~~ 10 days following the regular business meeting of the Board at which the decision was made. Notification of the Board's determination shall also be made by regular mail or electronic mail to the Division, the operator, and any other public agency or agencies exercising jurisdiction over the surface mining operation, if applicable, within ~~40~~ 15 days following the regular business meeting of the Board at which the decision was made.

(b) In ~~a~~ cases where the financial assurances ~~cost estimates~~ for reclamation ~~are~~ is not approved, deficiencies shall be noted in the correspondence notifying the appellant and the lead agency of the Board's decision. The appellant shall be granted, once only, a period of 30 days, or a longer period mutually agreed upon by the operator and the Board, to correct the noted deficiencies and submit the revised financial assurances ~~cost estimate~~ for reclamation to the lead agency for review and approval. The lead agency shall provide notice to the Division of the approved revised financial assurance cost estimate within 5 days of approval.

NOTE

Authority cited: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Sections 2770 and 2774, Public Resources Code.

§ 3691.1. Purpose of Regulations.

The regulations contained in sections 3691.2 – 3691.10 govern procedures for appeals to the State Mining and Geology Board (“the Board”) filed by the Division of Mine Reclamation (“the Division”), concerning lead agency approved financial assurance cost estimates for reclamation of surface mining operations under section 2770 of the Public Resources Code.

NOTE

Authority cited: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.

§ 3691.2. Filing of Intent to Appeal.

(a) The Division may file an appeal to the Board pursuant to section 2770 of the Public Resources Code concerning a financial assurance cost estimates, within 15 days of receiving a lead agency’s final response to comments pursuant to Public Resources Code section 2773.4(c)(6)(B) or 2773.4(d)(6), by through filing a notice of intent to appeal by submitting the following information:

(1) A copy of the financial assurance cost estimate and all supporting documents which the lead agency submitted to the Division for comment pursuant to Public Resources Code section 2773.4.

(2) A copy of the Division’s comments submitted pursuant to ~~PRC~~ Public Resources Code section 2773.4(c)(6)(B) or 2773.4(d)(6), and a written statement indicating the basis for the Division’s challenge of the approval by the lead agency concerning the financial assurance cost estimate for reclamation.

(b) A copy of the notice of intent to appeal shall be sent to the lead agency.

NOTE

Authority cited: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.

§ 3691.3. Determination of Jurisdiction.

The Chair~~person~~ of the Board, or the Chair~~person~~’s designee (Board Member), shall determine whether the appeal is within the jurisdiction of the Board for purposes of hearing the appeal. Where the Chair~~person~~ or the Chair~~person~~’s designee finds that the Division provided comments to the lead agency pursuant to Public Resources Code section 2773.4, ~~he or she~~ the Chair or the Chair’s designee shall grant a hearing on the appeal.

NOTE

Authority cited: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.

§ 3691.4. Administrative Record.

(a) Once the Division has been notified that a determination has been made that an appeal is within the jurisdiction of the Board for purposes of hearing the appeal, the Division shall submit ~~three~~ 3 copies of the complete administrative record certified by the lead agency, which shall include, but shall not be limited to, all of the following information:

(1) A copy of the lead agency approved reclamation plan for the mining operation and any permit conditions or California Environmental Quality Act mitigations which pertain to reclamation for which the financial assurance cost estimate for reclamation is proposed;

(2) Written transcripts of all public hearings related to the lead agency's approval of the financial assurance cost estimate.

(3) The financial assurance cost estimate and all supporting documents which the lead agency submitted to the Division for comment pursuant to Public Resources Code section 2773.4, along with comments submitted to the lead agency by the Division, and any supporting documentation.

(4) Any documents or information exchanged during a consultation requested by the Division pursuant to Public Resources Code 2773.4, subdivisions (c)(5)(A) or (d)(5)(C)(i).

(b) Failure of the Division to request the certified administrative record from the lead agency within ~~24~~ 15 days of receiving the notice stating the Board's acceptance of the appeal, may be grounds for dismissal of the appeal.

(c) If the Division is unable to obtain the certified administrative record from the lead agency within ~~40~~ 15 working days after submission of the request for the record, or by a date agreed to by the Division and lead agency, the Division shall ~~so~~ notify the Board in writing. The Board may then require the lead agency to immediately submit ~~three~~ 3 certified copies of the administrative record to the Board for purposes of hearing the appeal without undue delay.

(d) Failure of the lead agency to produce the certified administrative record upon request of the Board within 30 days may be grounds for Board action based on information provided solely by the Division, and the operator at the hearing. Where the lead agency has failed to produce the certified administrative record upon request of the Board, the certified administrative record shall be considered complete for purposes of scheduling the hearing pursuant to Public Resources Code section 2770 (f)(2).

(e) Along with the submission of the certified administrative record to the Board, the Division shall also provide copies of any estimates developed by the Division for the cost of reclamation for any specific aspect of reclamation in accordance with the approved reclamation plan and/or statements with any supporting documents challenging the basis for any specific aspect of reclamation in accordance with the approved reclamation plan.

(f) Costs associated with the preparation of the administrative record are included within those costs incurred by lead agencies under Public Resources Code section 2207, subdivision (e).

NOTE

Authority cited: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.

§ 3691.5. Hearing Procedures – Scheduling.

The Board shall schedule and hold a public hearing on an appeal no later than 45 days from the filing of the complete certified administrative record, or at such time as may be mutually agreed upon by the Board, the Division, the operator and the ~~Division~~ lead agency. The hearing may be scheduled as part of a regular business meeting of the Board or may be conducted by a committee of the Board.

NOTE

Authority cited: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.

§ 3691.6. Hearing Procedures - Authority for Delegation.

The Board may delegate conduct of the hearing to a committee of at least ~~two~~ 2 Board members to be appointed for that hearing by the Chair, ~~person of the Board~~. The Chair ~~person of the Board~~ or the Chair ~~person's~~ designee (Board Member) shall conduct the hearing; the recommendations of the committee shall be presented to a quorum of the Board at a regular business meeting for a decision of the full Board consistent with the procedures set forth in section 3691.10 of these regulations.

NOTE

Authority cited: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.

§ 3691.7. Hearing Procedures – Notice.

(a) At least ~~40~~ 15 working days prior to the hearing, the Board shall give public notice as follows:

- (1) Mailing the notice to the lead agency, the Division, and the operator;
- (2) Mailing the notice to any other public agency or agencies exercising jurisdiction over the surface mining operation, if applicable;
- (3) Mailing the notice to any person who requests notice of the appeal or hearing;
- (4) Mailing the notice to the Board's regular mailing list; and
- (5) Posting of the notice in a place where notices are customarily placed within the jurisdiction of the lead agency.

(b) The notice of hearing shall include the following:

- (1) Identification of the surface mining operation along with a ~~description~~ summary of the financial assurance cost estimate for reclamation that was approved by the lead agency, a brief description of the location of the surface mining operation by reference to any commonly known landmarks in the area, and a simple location map indicating the general location of the operation;
- (2) A summary statement of the Division's grounds for the appeal of the lead agency approved financial assurance cost estimate;
- (3) A statement that the Board may uphold the lead agency's approval of the financial assurance cost estimate or deny approval of the financial assurance cost estimate for reclamation;
- (4) A statement that if the Board denies approval of the financial assurance cost estimate, the disapproved financial assurance cost estimate shall be returned to the mine operator who shall be granted, once only, a period of 30 days, or a longer reasonable period mutually agreed upon by the operator, Division, and the Board, to correct the noted deficiencies consistent with the Board's determination and submit the revised financial assurance cost estimate to the lead agency for

approval, and to the Division, the Board, and any other public agency or agencies exercising jurisdiction over the surface mining operation, if applicable, for review;

(5) A statement inviting the Division, the lead agency, any other public agency or agencies exercising jurisdiction over the surface mining operation, if applicable, the operator, and the public to provide testimony and evidence at the hearing regarding the lead agency's approval of the financial assurance cost estimate; and

(6) The time, date, and location of the public hearing.

NOTE

Authority cited: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.

§ 3691.8. Hearing Procedures – Record.

The record before the Board at the public hearing shall be the certified administrative record submitted pursuant to sections 3691.2 and 3691.4 of this article.

NOTE

Authority cited: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Sections 2770 and 2774, Public Resources Code.

§ 3691.9. Hearing Procedures – Sequence.

(a) The public hearing shall normally proceed in the following manner:

(1) Identification of the record;

(2) Statements on behalf of the Division;

(3) Statements on behalf of any other public agency or agencies exercising jurisdiction over the surface mining operation, if applicable;

(4) Statements on behalf of the lead agency;

(5) Statements on behalf of the operator;

(6) Statements on behalf of the public;

(7) Rebuttal on behalf of the Division; and

(8) Motion to close the public hearing.

(b) Notwithstanding the above, the Chairperson or the Chairperson's designee (Board Member) for purposes of conducting the hearing may, in the exercise of discretion, determine the order of the proceedings.

(c) The Chairperson or the Chairperson's designee (Board Member) shall have the authority to impose time limits upon statements and presentations and to accept written statements in lieu of oral

statements. Written statements shall be submitted to the Board at least ~~40~~ 15 days prior to the hearing.

(d) The public hearing shall be recorded.

NOTE

Authority cited: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.

§ 3691.10. Hearing Procedures – Determination.

(a) Following the public hearing, the Board shall determine whether, based on the record before it, the lead agency approved financial assurance cost estimate for reclamation is sufficient to complete reclamation in accordance with the approved reclamation plan and/or plan amendments pursuant to the applicable requirements of Public Resources Code sections 2770, 2773.1, 2773.4, Article 11 (commencing with section 3800) of this subchapter, the Board's financial assurance guidelines, and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of section 2774. A lead agency approved financial assurance cost estimates determined to meet these requirements shall be upheld by the Board. Notification of the Board's determination shall be made by certified mail to the Division, the operator, the lead agency, and any other public agency or agencies exercising jurisdiction over the surface mining operation, if applicable, within ~~45~~ 10 days following the regular business meeting of the Board at which the decision was made.

(b) In cases where the lead agency approved financial assurance cost estimate for reclamation is found to be insufficient to complete reclamation, deficiencies, including any adequate cost estimates for each noted deficiency, shall be noted in the correspondence notifying the lead agency, any other public agency or agencies exercising jurisdiction over the surface mining operation, if applicable, the Division, and the operator of the Board's determination. The operator shall be granted, once only, a period of 30 days, or a longer period mutually agreed upon by the operator, the Division, and the Board, to correct the noted deficiencies and submit the revised financial assurance cost estimate to the lead agency for approval, and to the Division, the Board, and any other public agency or agencies exercising jurisdiction over the surface mining operation, if applicable, for review. Prior to lead agency approval of the revised financial assurance cost estimate, the Chairperson of the Board, or the Chairperson's designee (Board Member or Executive Officer) shall have a period of 15 days following receipt to review the revised financial assurance cost estimate for confirmation that the corrections are consistent with the Board's determination. Only after the Board has provided notice to the lead agency confirming the corrections are consistent with the Board's determination may the lead agency approve the revised financial assurance cost estimate. The lead agency shall provide notice to the Division and any other public agency or agencies exercising jurisdiction over the surface mining operation, if applicable, of the approved revised financial assurance cost estimate within 5 days of approval.

NOTE

Authority cited: Sections 2755, 2759, and 2770, Public Resources Code. Reference: Sections 2770 and 2774, Public Resources Code.